

Appeal from decision of Montana State Office, Bureau of Land Management, declaring unpatented mining claim abandoned and void. M MC 64756(SD).

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claims -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim must file a notice of intention to hold the claim or evidence of performance of annual assessment work on the claim on or before Dec. 30 of each calendar year. This requirement is mandatory, and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or to afford

claimants any relief from the statutory consequences.

3. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their duties.

APPEARANCES: James A. Huff and Elizabeth H. Young, pro sese.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

James A. Huff and Elizabeth H. Young appeal the Montana State Office, Bureau of Land Management (BLM), decision of August 16, 1982, which declared the unpatented J/L Mining Number One placer mining claim, M MC 64756(SD), abandoned and void because no proof of labor or notice of intention to hold the claim for 1981 was filed with BLM prior to December 31, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

Appellants allege they mailed the required proofs of labor for this claim and for four other claims October 15, 1981, after recording them in Lawrence County, South Dakota. Appellants assert they have not abandoned this claim, and they state they have performed the assessment work for 1982 thereon.

[1] It is well established that failure of the owner of an unpatented mining claim to submit evidence of assessment work or a notice of intention to hold the claim, both to the county where the location notice is recorded and to the proper office of BLM, prior to December 31 of each year, shall be deemed conclusively to constitute an abandonment of the claim. 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a).

[2] As the Board stated in Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981):

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

* * * Appellant also argues that the intention not to abandon these claims was apparent * * *. At common law, evidence of the abandonment of a mining claim would have to establish that it was the claimant's intention to abandon and that he in fact did so. Farrell v. Lockhart, 210 U.S. 142 (1908); 1 Am. Jur. 2d, Abandoned Property §§ 13, 16 (1962). Almost any evidence tending to show to the contrary would be admissible. Here, however, in enacted legislation, the Congress has specifically placed the burden on the claimant to show that the claim has not been abandoned by complying with the requirements of the Act, and any failure of compliance produces a conclusive presumption of abandonment. Accordingly, extraneous evidence that a claimant intended not to abandon may not be considered. [Emphasis in original.]

53 IBLA at 196-97; 88 I.D. 371-72.

[3] A legal presumption of regularity attends the official acts of public officers, and in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1 (1926); Legille v. Dann, 544 F.2d 1 (D.C. Cir. 1976); Kephart v. Richardson, 505 F.2d 1085, 1090 (3d Cir. 1974); Lawrence E. Dye, 57 IBLA 360 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761 (D.C. Cir. 1943); H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

We find the assertions of appellants do not constitute a sufficient predicate for holding that the proof of labor was properly submitted to BLM and that BLM then lost or misplaced it.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

Gail M. Frazier
Administrative Judge